

Clarence Gideon, who could not afford a lawyer, was convicted of breaking into a pool hall and stealing money out of a jukebox. "I am innocent," he claimed. The Supreme Court took up his petition, scrawled by hand on plain paper, listened to his arguments, and gave his constitutional rights content and meaning. Thanks to the Supreme Court, Gideon got a lawyer and was acquitted of the charges against him.

This is what the Supreme Court stands for in our country. Sharron Frontiero, Barbara Johns and Clarence Gideon were hardly powerful or well connected, but they could rely on the Supreme Court to listen fairly to their pleas for justice. The Supreme Court is the institution—really unique in the world—all of us, rich or poor, famous or forgotten, can look to for justice; The place where anyone can go to and say, "I will be heard, and I will have my rights."

Let me conclude my remarks where I began. The Constitution is the soul of this country. I will be looking during these hearings for the intensity of your feelings about the liberties that make this country special, and your devotion to the Court as the protector of those rights. I want you to be a justice who recognizes the importance of this role—a justice who perceives your pivotal place in the history of our democracy, and the great trust that has been placed in your care.

I would not expect you to be outspoken on this score—your nature is to let your actions from the bench speak for themselves. But I do expect—really I know—that in the days ahead we will get a sense of your quiet determination and inner zest for the cause of justice—a cause to which you have dedicated your life.

Welcome to you and your family. I look forward to discussing these issues with you in the days ahead.

The CHAIRMAN. Thank you very much, Senator.  
Senator Specter.

#### OPENING STATEMENT OF SENATOR SPECTER

Senator SPECTER. Thank you very much, Mr. Chairman.

Judge Ginsburg, I welcome you here with my colleagues, and I compliment you on an outstanding academic, professional, and judicial record—some 322 opinions and still counting, and 79 articles.

Notwithstanding that outstanding record, I do express concern that some of my colleagues have expressed virtual approval of your nomination even before the hearings have begun, and I believe that that raises some significant problems.

I think that, first, there is a tendency to look at the hearings as pro forma or perhaps just going through the motions with confirmation a virtual assurance. Second, I am concerned about the real risk of undermining public confidence that the Senate will vigorously discharge its constitutional duty of advice and consent on a nominee who will have such a profound effect on the daily lives of more than 250 million Americans, with so many 5-4 decisions on the crucial issues of the day.

I have long expressed my own concern about judicial activism and the Supreme Court being a superlegislature, with the concern about undermining the vital constitutional principle of separation of powers.

At the outset let me say that, as I read your writings, I agree with much of what you say; and that if you were a Senator offering your ideas and legislation on the Senate floor, I would be inclined to cosponsor a good bit of what you articulate.

But the difficulty with judicial activism, as I see it, is that it is fine when we agree with your activism, but it is very problematic if the principle is established that judicial activism is appropriate.

One of my colleagues referred to the agenda of the nominees of two Republican administrations and made it plain that he doesn't favor that kind of judicial activism. And I believe that, as a matter

of principle, it is vital to keep the activism out of the judicial line as much as is possible.

I have been very much impressed with the breadth of your writings and the openness and the candid approach which you have taken. When you talk about extension of benefits where there is an equal protection violation, and the Court then extends benefits to those not covered by legislation, you are candid in saying that you are legislating a bit. And any legislation by the Court is a matter of concern.

When you take up the equal protection issue and talk about bold interpretation and talk about judges being uneasy in the gray zone between interpretation and alteration of the Constitution, those raise concerns to me about where activism may lead.

Again, I repeat, I admire the positions you have taken and what you have achieved as a litigant and what you have done as a jurist. And I also say that on the bench you have not carried forward the lines which you have written. But as one of my colleagues has noted, when you are on the Supreme Court—how did my colleague put it?—you will have a free hand in doing a great deal more.

So I think these hearings are very important as we take a look at your record, as we take a look at what you have written and see how that may be applied. And as noted by a number of my colleagues, I think we are past the day where there is an issue about the propriety of inquiring into judicial philosophy, although we do not want you to answer how you are going to decide specific cases.

I have noted your writing that the second opinion by the Senate is a very important second opinion and your endorsement of the proposition that the Senators should have equal latitude with the President in deciding which nominees are good for the country.

Beyond those theoretical issues, there are many very important matters that are on the cutting edge of critical considerations for the American people, and I look forward to these hearings and hope that we will be able to have an open exchange where we will have some real idea as to how you see your role as a Supreme Court Justice contrasted with a court of appeals judge, where you will have a freer hand and where there will be a question as to how you will apply the writings on legislation and expansive interpretation of constitutional rights.

Thank you very much.

The CHAIRMAN. Thank you very much, Senator.

Senator Heflin.

#### OPENING STATEMENT OF SENATOR HEFLIN

Senator HEFLIN. Judge Ginsburg, I welcome you and congratulate you on your selection as a nominee for the U.S. Supreme Court.

Over the years, I have had the opportunity to participate in the confirmation process of a number of nominees for our Nation's highest court. I have during past hearings seen the organized distortions of interest groups, heard the roars of extreme party loyalists, and witnessed the divisiveness of politics. I have in a sense seen blood shed during past confirmation hearings.

This time I believe we will see a process remarkably free of acrimony and partisan bickering. Already there is a noticeable dif-